Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for	)	WC Docket No. 07-135
Local Exchange Carriers	)	
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier	)	CC Docket No. 01-92
Compensation Regime	)	
	)	
Federal-State Joint Board on Universal	)	CC Docket No. 96-45
Service	)	
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	

COMMENTS OF THE
NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

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EXECUTIVE SUMMARY

Over the last two years, the Commission has made clear its intention to reform the high-cost support and intercarrier compensation regimes by following four key principles: (1) Modernize both regimes for broadband; (2) Exercise fiscal responsibility; (3) Require accountability of recipients; and (4) Employ market-driven mechanisms.

As the Commission enters the home stretch of this reform effort, it must hold true to these principles by amending the reform proposals filed by the incumbent local exchange carriers (LECs) in several key respects and by rejecting the demands of incumbents to adopt a "take it or leave it" posture.. While we appreciate the contribution that the incumbent LECs have made to the policy debate in developing these proposals, and while we support many of the individual components of these proposals, taken as a whole the proposals in their current form fall short of fulfilling the Commission's principles in three significant ways:

1. <u>Fiscal Responsibility</u>. NCTA agrees with the Commission that the starting point for any reform of the high-cost support program is establishing meaningful constraints on the size of the program. We commend the incumbent LECs for attempting to incorporate the goal of financial responsibility into the design of the program, but we are concerned that various targets and budgets included in the proposals are merely aspirational. The Commission can and should establish mechanisms to ensure that the program promotes greater efficiency and expands the availability of broadband without placing any greater burden on consumers than it does today.
2. <u>Competitive Neutrality</u>. In a number of significant ways, the proposals demonstrate a consistent bias in favor of incumbent LECs at the expense of all other providers. For example, they propose increasing the amount of high-cost support received by incumbent LECs and largely denying other providers the opportunity to receive such

support. They propose creating an access replacement mechanism that is available only to incumbent LECs, regardless of size and with no demonstration of need, while providing no comparable support to competitors, even small companies serving rural areas. These and similar elements of the incumbent LEC proposals are relics of the past and they should have no place in a modern, market-based regime.

3. Regulatory Certainty. The incumbent LEC proposals also fall short in providing the level of regulatory certainty needed to minimize disputes and fairly implement a reformed system of intercarrier compensation. While NCTA supports the inclusion of voice over Internet Protocol (VoIP) providers in the new compensation regime, additional clarity is needed to ensure that legacy non-VoIP providers actually pay the rates established by the Commission according to the same rules that will apply to VoIP providers under the proposal. We also have significant concerns about the proposed treatment of tandem switching and transport under the incumbent LECs' ABC Plan. As explained in the comments, a key part of any market-based approach to intercarrier compensation reform is preserving the basic framework for interconnection and traffic exchange that competitors have relied on since the Telecommunications Act of 1996 was enacted.

In addition to explaining our concerns with the incumbent LECs proposals, our comments include an Amended ABC Plan that reflects NCTA's proposed plan for reform of the high-cost support and intercarrier compensation regimes. The Amended ABC Plan starts from the ABC Plan submitted by the price cap incumbent LECs, but revises it to cover areas served by price cap and rate-of-return incumbent LECs and to better reflect the competitive broadband marketplace that exists today. The approach outlined in the Amended ABC Plan would enable the Commission to move toward the goal of universal broadband availability in a manner that promotes competition and limits the burden on consumers. For all the reasons explained in the comments, NCTA encourages the Commission to adopt the Amended ABC Plan.

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COMMENTS OF THE NATIONAL CABLE & TELECOMMUNICATIONS ASSOCIATION

The National Cable & Telecommunications Association (NCTA)[1] hereby submits its comments in response to the public notice issued in the above-referenced proceedings.[2] NCTA encourages the Commission expeditiously to reform the universal service high-cost support and intercarrier compensation systems consistent with its commitment to promoting a competitive marketplace and limiting the financial burdens of American consumers. For the reasons

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1 NCTA is the principal trade association for the U.S. cable industry, representing cable operators serving more than 90 percent of the nation's cable television households and more than 200 cable program networks. The cable industry is the nation's largest provider of broadband service after investing over $170 billion since 1996 to build two-way interactive networks with fiber optic technology. Cable companies also provide state-of-the-art competitive voice service to more than 23 million customers.

2 *Further Inquiry Into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Public Notice, DA 11-1348 (WCB/WTB, Aug. 3, 2011).

explained in these comments, the Commission should adopt an amended version of the America's Broadband Connectivity Plan submitted by the incumbent local exchange carriers (LECs) that better reflects and promotes today's competitive broadband marketplace. The Amended ABC Plan attached to these comments will promote broadband deployment in a manner that stays true to the Commission's objectives of fiscal responsibility and market-driven policies.[3]

INTRODUCTION AND SUMMARY

NCTA fully supports the recently stated goals of all four commissioners "to achieve [universal service high-cost support and intercarrier compensation] reform in a comprehensive and legally sustainable way that modernizes the current system; brings broadband to millions of Americans that are currently unserved; puts USF and ICC on a fiscally responsible path that provides incentives for efficient operations and accountability for every dollar spent; contains the size of the Universal Service Fund; and fairly balances the interests of all consumers."[4] We are also pleased that the commissioners intend to complete these reforms this fall.[5] To assist the Commission in this effort, we provide an amended version of the incumbent LECs' ABC Plan that comports with the goals set forth by the commissioners and with the principles for reform outlined by the Commission in its February 2011 *Further Notice of Proposed Rulemaking*.[6]

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3 The Amended ABC Plan represents NCTA's effort to provide the Commission with an alternative proposal for prospective reform. Some of the issues addressed in this proposal are subject to pending disputes under existing law. To the extent individual NCTA members file separate comments or otherwise express different views on particular issues addressed in the proposal, the individual company filing should be deemed to reflect that company's positions.

4 Julius Genachowski, Michael Copps, Robert McDowell, and Mignon Clyburn, *Bringing Broadband to Rural America: The Home Stretch on USF and ICC Reform*, Official FCC Blog (Aug. 8, 2011), http://www.fcc.gov/blog/bringing-broadband-rural-america-home-stretch (FCC Commissioners' August 8 Joint Blog Post).

5 *Id.*

6 The Commission stated that its reforms would be guided by four principles: 1) modernizing high-cost support and intercarrier compensation for broadband; 2) fiscal responsibility; 3) accountability; and 4) market-driven

The ABC Plan was filed by six large and mid-sized incumbent LECs, and it focuses on the distribution of high-cost support and intercarrier compensation reform for the areas these companies serve.[7] On the day the ABC Plan was filed, the same six incumbent LECs, in conjunction with several trade associations that represent smaller incumbent LECs, filed a letter that included some high level agreement among these entities for reform in areas served by incumbent LECs subject to rate-of-return regulation.[8]

As we noted in our July 29, 2011 filing, the ABC Plan represents a workable framework from which the Commission can start to craft fiscally-responsible universal service high-cost support and intercarrier compensation reforms in a broadband environment.[9] However, there are aspects of the ABC Plan that do not comport with the Commission's stated goals for achieving reform, and which should be amended to ensure that reform is accomplished in a manner that is competitively and technologically neutral, imposes true fiscal discipline and accountability, and achieves regulatory certainty in the years to come.

To this end, we are submitting an Amended ABC Plan that is more closely aligned with the Commission's reform principles. The Amended ABC Plan retains much of the framework

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policies. *Connect America Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd 4554, 4560-61, ¶ 10 (2011) (*2011 USF-ICC FNPRM*).

7 The incumbent LECs filing the ABC Plan are AT&T, CenturyLink, FairPoint Communications, Frontier Communications, Verizon, and Windstream. Letter from Robert W. Quinn, Jr., Senior Vice President-Federal Regulatory & Chief Privacy Officer, AT&T, *et al.*, to Marlene Dortch, Secretary, Federal Communications Commission,, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, 06-122, 04-36, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, 99-200, 96-98, 99-68, Attach. 1 (July 29, 2011) (ABC Plan).

8 In addition to the six incumbent LECs filing the ABC Plan, this letter was signed by the United States Telecom Association, the National Telecommunications Cooperative Association, OPASTCO, and the Western Telecommunications Alliance. Letter from Jonathan Banks, USTelecom, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, 06-122, 04-36, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, 99-200, 96-98, 99-68, Attach. (July 29, 2011) (Joint Letter).

9 Letter from Steven F. Morris and Jennifer K. McKee, NCTA, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51 (July 29, 2011) (NCTA July 29 *Ex Parte* Letter).

provided by the original incumbent LECs that drafted it, but it also takes into account the perspective of broadband providers that compete with those incumbent LECs. Specifically, the Amended ABC Plan achieves the following Commission goals:

1) Fiscal Responsibility: Federal funding disbursed as high-cost support would be subject to an explicit, meaningful constraint of $4.5 billion per year. In addition, broadband support would be made available to the most efficient provider, not simply the provider that has served an area for the longest period of time.

2) Modernizing Support for Broadband: Rather than adopting support methods that vary based on whether an area is served by a price cap incumbent LEC or a rate-of-return incumbent LEC, high-cost support for broadband networks ultimately should be disbursed on the same basis throughout the country. The Amended ABC Plan refines the original plan's proposal to target support in price cap areas and proposes an approach for targeting support in areas served by rate-of-return carriers. Once new broadband support mechanisms are established, any remaining legacy high-cost support should be phased out as expeditiously as possible. The Commission should adopt a sunset date for legacy rate-of-return regulation, and should refer to the Federal-State Joint Board on Universal Service (Joint Board) the question of how best to transition away from this type of regulation within the specified timeframe.

3) Promotion of Market-Driven Policies: The Commission should not adopt proposals that favor incumbent LECs over other broadband providers merely because they are incumbents, such as the right-of-first refusal for incumbent LECs to choose to receive broadband support. Instead, the Commission should adopt market-based methods, such as competitive bidding, to determine the provider that can most efficiently serve an area.

The Commission also should ensure that the transition of intercarrier compensation rates operates in a manner that does not disadvantage Internet Protocol (IP)-based networks when they exchange traffic with legacy Time Division Multiplex (TDM)-based networks. Promotion of market-driven policies also means that the Commission should preserve the pro-competitive framework for interconnection and traffic exchange that was adopted pursuant to the Telecommunications Act of 1996, including the continued regulation of tandem switching and transport services.

4) Accountability: Any broadband support should be conditioned on a clear, enforceable commitment to build and operate broadband facilities in the supported area. Access replacement funding generally is not tied to such conditions and therefore should not be routinely available. Rather than assuming that incumbent LECs are eligible for support merely because they face access revenue reductions, the Commission should explicitly exclude price cap incumbent LECs from eligibility for such funding and require other carriers to demonstrate a specific need for funding to replace any revenue they may lose due to reform.

To achieve its goals of conducting meaningful, fiscally-responsible reform that encourages the deployment of broadband, the Commission should adopt the Amended ABC Plan.

I. <u>CHANGES THAT MORE FULLY ADDRESS THE COMMISSION'S PRINCIPLE OF FISCAL RESPONSIBILITY</u>

The Commission has consistently reiterated its commitment to reforming the distribution of universal service high-cost support in a fiscally responsible manner.[10] As the National Broadband Plan noted, unrestrained growth in the fund not only affects consumers, who pay into the fund via a contribution factor that continues to reach higher and higher levels, but could also "jeopardize public support for the goals of universal service."[11] Although the incumbent LECs' ABC Plan attempted to address this issue by creating a target for funding in areas served by price cap incumbent LECs, there was no corresponding, meaningful constraint on support in areas served by rate-of-return incumbent LECs. In fact, the Joint Letter included several provisions designed to avoid a set budget, and contemplated growth beyond the identified "funding targets."[12]

As the Commission has recognized, fiscal responsibility should be injected into the Universal Service Fund.[13] To do so, the Commission should adopt a specific limit on the amount of annual funding that is disbursed through high-cost support. The Commission should set an annual spending limit of $4.5 billion for high-cost support, which would include newly developed support for broadband networks, as well as any legacy high-cost support, mobility support, and any access replacement support that the Commission decides to disburse.

[10] *Connect America Fund*, WC Docket Nos. 10-90 and 05-337, GN Docket No. 09-51, Notice of Inquiry and Notice of Proposed Rulemaking, 25 FCC Rcd 6657, 6677-78, ¶¶ 51-52 (2010) (*2010 USF-ICC Notice*); *2011 USF-ICC FNPRM*, 26 FCC Rcd at 4560, ¶ 10; FCC Commissioners' August 8 Joint Blog Post.

[11] *Connecting America: The National Broadband Plan*, GN Docket No. 09-51, at 149-150, http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-296935A1.pdf (Omnibus Broadband Initiative, Mar. 16, 2010) (National Broadband Plan).

[12] Joint Letter at 2 (proposing targets of $2.2 billion for price cap incumbent LEC areas, $2 billion for rate-of-return incumbent LEC areas, $300 million for mobility funding, and extending support that would be available only to rate-of-return incumbent LECs by $300 million above the specified target, yielding total annual support of $4.8 billion per year).

[13] *2010 USF-ICC Notice*, 25 FCC Rcd at 6677-78, ¶¶ 51-52; *2011 USF-ICC FNPRM*, 26 FCC Rcd at 4560, ¶ 10; FCC Commissioners' August 8 Joint Blog Post.

The adoption of this limit will help to stabilize the contribution amounts that consumers pay, and will provide a substantial amount of support each year to promote deployment of broadband in high-cost areas. To enforce a cap, the Commission will need to establish a process by which it determines which broadband projects will be funded if demand exceeds the level of the cap. Moving to a procurement regime will enable the Commission to prioritize support by providing long-term commitments of support for specific projects, rather than constantly adjusting annual support levels to particular companies as under the current regime. As proposed in the *2011 USF-ICC FNPRM*, the Commission can prioritize those projects that will provide service to the most unserved homes for the lowest amount of support per home.[14]

The availability of up to $4.5 billion per year, appropriately targeted to high-cost areas, will provide sufficient funding to support broadband deployment. Adopting this budget and enacting effective targeting may reduce support received by some providers and increase it for other providers. In the event that any particular provider faces the possibility that the changes adopted as part of this reform effort jeopardize its ability to continue providing service to consumers, the Commission may grant a waiver of its rules based upon a proper showing that there is good cause for the waiver.[15]

In addition to adopting a specific annual budget for high-cost support, fiscal responsibility dictates that no more high-cost support should be disbursed than is necessary. The incumbent LEC proposals fall short in this area as well. The incumbent LEC proposals essentially divide up support between price cap incumbent LECs and rate-of-return incumbent LECs, while significantly increasing the amount of high-cost support these entities would

[14] *2011 USF-ICC FNPRM*, 26 FCC Rcd at 4649-50, ¶¶ 286-88.

[15] 47 C.F.R. § 1.3 (the Commission may waive its rules based on a petition or on its own motion if good cause for the waiver is shown).

receive. In 2010, incumbent LECs received approximately $3.1 billion in high-cost support.[16] Under the ABC Plan and the plan proposed by rural rate-of-return incumbent LEC trade associations, the amount of high-cost support incumbent LECs would receive each year would increase to $4.3 billion per year.[17] Alternative, more efficient, providers do not have a meaningful opportunity to receive support under either the ABC Plan or the proposal set out by the rate-of-return incumbent LEC trade associations.[18] In the following sections we describe the changes that the Amended ABC Plan includes to address this concern.

II. CHANGES THAT BETTER SERVE TO MODERNIZE UNIVERSAL SERVICE HIGH-COST SUPPORT AND INTERCARRIER COMPENSATION FOR BROADBAND

A. Connect America Fund Support

In the ABC Plan the incumbent LECs took some steps to create a high-cost funding mechanism to support broadband services, the Connect America Fund (CAF). The proposed CAF is based on a procurement model in which support is provided to a company in exchange for building and operating a broadband network in the supported area for a particular period of time. NCTA agrees with that basic premise and we have included it in the Amended ABC Plan.[19] As described in the following section, a number of changes are needed for that approach to be as effective and efficient as it should be in today's competitive marketplace.

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16 Universal Service Administrative Company 2010 Annual Report, http://www.usac.org/_res/documents/about/pdf/usac-annual-report-2010.pdf, at 50 (last visited Aug. 23,2011).

17 Joint Letter at 2 (proposing an annual budget of $2.3 billion for rate-of-return incumbent LECs); ABC Plan, Attach. 1 at 6 n.7 (stating that approximately $2 billion per year (82% of the $2.2 billion annual set aside for price cap incumbent LEC areas) would go to price cap incumbent LECs under the right of first refusal).

18 Comments of the National Exchange Carrier Association, Inc. *et al.*, WC Docket Nos. 10-90. 07-135, 05-337, GN Docket No. 09-51, CC Docket No. 01-92 (Apr. 18, 2011) (setting out a proposal in which only rural rate-of-return incumbent LECs would receive support in the areas that they serve).

19 As an alternative to disbursing support to providers through a procurement model process, the Commission could also consider providing support on a portable basis to the provider that wins the customer, or directly to consumers in the form of portable vouchers. Consumers would provide support through the vouchers to the broadband provider of their choice.

The CAF proposed by the incumbent LECs in the ABC Plan did not go far enough to ensure that the current voice-centric high-cost funding mechanisms fully transition to support broadband. Specifically, their version of the CAF would be available only in areas served by price cap incumbent LECs, and not in areas served by rate-of-return regulated incumbent LECs. To fully modernize high-cost support, the Commission should adopt a CAF that can apply to all areas of the country. Rather than maintaining indefinitely the legacy distinctions from a voice service regulated environment, CAF support should ultimately be the sole method for disbursing broadband support.

To achieve this goal, the Commission should accelerate the phase out of legacy support proposed in the ABC Plan. Rather than a five-year phase out of legacy support after CAF support begins to be disbursed, legacy high-cost support should be eliminated in two years in areas served by price cap incumbent LECs. As NCTA has noted previously, existing support for price cap carriers is not tied to any obligation to invest the money in supported areas, nor does it have any meaningful effect on incumbent LEC retail prices, which are fully deregulated at the federal level and largely deregulated in most states.[20] Once CAF support is provided to the most efficient broadband provider, it is inefficient and wasteful to continue to provide federal subsidies to voice service providers in the same areas.[21] As discussed below, phase out of legacy mechanisms in areas served by rate of return LECs may require a different transition.

The ABC Plan also appropriately attempts to modernize high-cost support by recognizing that such support should not be available in areas where an unsubsidized broadband competitor

[20] Comments of the National Cable & Telecommunications Association, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, at 6-7 (Apr. 18, 2011); National Cable & Telecommunications Association Petition for Rulemaking, WC Docket No. 05-337, at 15-17 (Nov. 5, 2009).

[21] To the extent states continue to impose carrier of last resort (COLR) obligations on voice service providers, those obligations should be funded by the states, if necessary, and not through federal universal service support.

offers service. The Amended ABC Plan includes some clarifications to this provision, specifying that an "unsupported broadband competitor" should include not only wireline providers, but also wireless broadband providers that offer the specified level of broadband service. In addition, the Commission should ensure that CAF support does not provide duplicate funding in areas where a provider has been awarded stimulus funding, either through the BTOP from NTIA or the BIP through RUS, to deploy and provide broadband service.[22]

B. Satellite/Mobility Support

The ABC Plan proposed the creation of an Advanced Mobility/Satellite Fund (AMF) that would transition high-cost support from supporting mobile voice services to mobile broadband, and would provide subsidies for satellite service to consumers in extremely high-cost areas. We agree that it may be appropriate for the Commission, within the $4.5 billion annual high-cost budget, to provide support for satellite service in high-cost areas and possibly to mobile broadband service as well. Unlike the incumbent LEC proposal, we do not recommend a specific $300 million annual limit on AMF support, but leave it to the Commission's discretion to determine how much support from the $4.5 billion total amount should be available for these purposes. The Commission should also determine how much support should be targeted for satellite service discounts for consumers in extremely high-cost areas, versus providing mobile broadband support in areas that may already have a subsidized broadband provider receiving CAF support. Under no circumstances, however, should AMF support be available in areas where an unsubsidized broadband competitor offers service.

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[22] *2011 USF-ICC FNPRM*, 26 FCC Rcd at 4655-56, 4659, ¶¶ 308, 323.

C. High-Cost Support in Rate-of-Return Incumbent LEC Areas

As discussed above, the ABC Plan does not address the treatment of high-cost support in areas served by rate-of-return regulated incumbent LECs. To fully modernize high-cost support, these areas must be addressed. The Amended ABC Plan includes a section addressing the treatment of rate-of-return regulated incumbent LECs, and moving support in these areas from the legacy telephone regulation era to the broadband era of the future.

Specifically, the Amended ABC Plan calls for a sunset date for rate-of-return regulation by 2019, after which time all high-cost support will be disbursed through the CAF and the AMF. It is necessary for the Commission to affirmatively adopt an end date for rate-of-return regulation, or, as history has shown, this type of regulation and the method for disbursing high-cost support in these rural areas will linger on indefinitely.[23] The Commission should refer to the Joint Board the task of recommending a transition plan for eliminating rate-of-return regulation by the specified sunset date.

During the transition, the Commission should adopt several reforms to rate-of-return regulation to eliminate waste and inefficiencies identified in the *2011 USF-ICC FNPRM*.[24] First, as the state members of the Joint Board recommended, the Commission should adjust the available rate of return from the 11.25 percent level that has been in place for two decades, to a rate of return of 8.5 percent.[25] As the state members demonstrate, this rate of return is more in

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[23] In 1997 the Commission found that "a cost methodology based on forward-looking economic cost should be used to calculate the cost of providing universal service for high cost areas because it best reflects the cost of providing service in a competitive market for local exchange telephone service." The Commission committed at that time to continue to work with the Joint Board to develop forward-looking economic cost mechanisms for rural carriers. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8792-93, ¶26 (1997). More than fourteen years later, the Commission's goal of basing high-cost support on forward-looking costs has still not been enacted for rural carriers.

[24] *2011 USF-ICC FNPRM*, 26 FCC Rcd at 4609, ¶¶ 157-58.

[25] Comments by State Members of the Federal-State Joint Board on Universal Service, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, at 36-37 (May 2, 2011).

line with current market conditions.[26] The Commission should also adopt several of the proposals it set out in the *2011 USF-ICC FNPRM*, including adopting an annual limit on high-cost support of $3000 per line,[27] eliminating support for corporate operations expenses,[28] and providing a limit to the amount of operating expenses and capital expenses that a rate-of-return regulated incumbent LEC can recover.[29]

Finally, during the interim transition period in which rate-of-return regulation remains, the Commission should take steps to ensure that high-cost support is eliminated in areas that are served by unsubsidized broadband competitors. Specifically, the Commission should identify rate-of-return incumbent LEC study areas where: 1) an unsubsidized broadband competitor serves at least 75 percent of the homes; and 2) the high-cost support currently received by the incumbent LEC exceeds the CAF support computed under the cost model by 10 percent or more.[30] In those areas, the incumbent LEC's high-cost support will be limited to the CAF cost model support during the transition, and phased out consistent with any Joint Board recommendation adopted by the Commission.

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26 *Id.* (noting that the 11.25% rate of return was set 20 years ago when the interest rate on debt was much higher than today, citing an interest rate of 7.83% on a three-month Treasury bill in January of 1990, versus an interest rate of 0.15% in January 2011). As demonstrated in a recent filing by RUS, hundreds of incumbent LECs have loans from RUS "at or near treasury rates of interest." Letter from Jonathan Adelstein, Administrator, Rural Utilities Service, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, Attach. at 12 (July 29, 2011).

27 *2011 USF-ICC FNPRM*, 26 FCC Rcd at 4626-29, ¶¶ 208-15.

28 *Id.* at 4623-24, ¶¶ 194-200.

29 *Id.* at 4624-26, ¶¶ 201-07.

30 For example, if there are 10,000 households in a rate-of-return incumbent LEC study area, and the incumbent LEC receives $2,000,000 per month in legacy high-cost support in that study area, the study area would be identified for reduced support if an unsubsidized broadband competitor offered service to 7,500 or more of the households (75% of 10,000), and the CAF cost model indicated that high-cost support for the study area should be no more than $800,000 per month ($2,000,000 legacy support > $800,000 CAF support plus 10% ($880,000)). In that scenario the rate-of-return incumbent LEC would be limited to receiving the $800,000 amount that the CAF cost model identified for the census blocks within the study area that are not served by an unsubsidized broadband competitor. In study areas where competitors serve 100% of households, support to the incumbent LEC should be eliminated. The incumbent LEC would have an opportunity to challenge any finding that led to reduced support.

III. CHANGES THAT PROMOTE MARKET-DRIVEN POLICIES

One of the guiding principles of reform is that the Commission should move toward market-driven policies to the extent possible. Market-driven policies are those that respect and promote a competitive marketplace where it exists, as well as those that employ market-oriented mechanisms, such as competitive bidding, in lieu of regulatory solutions where feasible. The incumbent LEC proposals fall short of this principle in a number of significant ways.

A. High-Cost Support in Price Cap Areas

The ABC Plan proposes to distribute support in high-cost areas by (1) identifying areas that do not already have broadband service from an unsubsidized provider; (2) among those areas, identifying those that qualify as high-cost areas; (3) determining the cost of building a broadband network in the high-cost areas that do not have service available from an unsubsidized provider, i.e., supported areas; (4) providing price cap LECs with a right of first refusal to serve the supported area at the support level established in Step 3; and (5) conducting a competitive bidding process for support in areas where the price cap LEC does not exercise the right of first refusal.[31]

As a threshold matter, we note that the use of a cost model raises a number of concerns. At a high level, there are two sets of issues raised by the use of any model – do the inputs to the model accurately reflect the cost of building a network and do the model's algorithms accurately model the necessary network facilities for a particular area? Given that the proponents of the ABC Plan have not made public the model or the inputs, at this point it is impossible for anyone, including the Commission, to answer these questions.

[31] ABC Plan, Attach. 1 at 2-7.

In addition to basic concerns about the public accessibility of the model, we have more specific concerns about the results it is likely to produce. In particular, the model appears to include only the costs of deploying incumbent LEC wireline broadband networks, and to ignore the costs of deploying other types of broadband networks, including wireless broadband. This is a curious choice for a model that is sponsored by the two largest wireless carriers (AT&T and Verizon), and developed by the same company (CostQuest) that developed the model used in connection with the National Broadband Plan, which did consider wireless.[32] The materials submitted with the ABC Plan provide no explanation for this choice, nor is there any discussion of its consequences.

Assuming access to the model eventually is made available and that the model accurately captures the costs of wireline networks, a number of changes are needed before the multi-step process proposed by the incumbent LECs could be found to promote market-driven policies. To the extent Step 1 targets support only to areas that do not have an unsubsidized provider, it moves in the right direction. But in practice, the model proposed in the ABC Plan does not appear to account for the availability of wireless broadband services (either fixed or mobile), or wireline broadband services other than cable.[33] As a result, the proposal will spend more money than is necessary by providing support in areas that already have wireless or non-cable wireline broadband service.

Similarly, the model does not account for reasonably anticipated deployment, such as construction pursuant to American Recovery and Reinvestment Act stimulus funding from RUS

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[32] The Broadband Availability Gap, OBI Technical Paper No. 1, Omnibus Broadband Initiative, at 62, http://download.broadband.gov/plan/the-broadband-availability-gap-obi-technical-paper-no-1.pdf (Apr. 2010) (OBI Broadband Availability Gap Paper).

[33] ABC Plan, Attach. 2 at 1 ("For all model scenarios, areas already served by a cable company offering broadband were not considered eligible for CAF support."); and Attach. 3 at 19 ("Cable Unserved – Funding is only [available in] areas that lack cable broadband service.").

or NTIA, announced deployment schedules for 4G wireless services, and construction commitments made in the context of merger proceedings. By ignoring all of these situations, the model creates the possibility that the high-cost program will award funding to a project in an area that already is slated to receive broadband in the near future. Before awarding any funding, the Commission must take steps to ensure that it will not be subsidizing duplicative facilities.

In Step 3, the ABC Plan cost model develops the cost of a wireline broadband network and uses that as the basis for establishing support levels. But the model developed in connection with the National Broadband Plan found that it was often less expensive to serve high-cost areas with fixed wireless broadband service.[34] The ABC Plan model's failure to consider fixed wireless means that the support levels calculated by the model are higher than is necessary to serve the supported area. Not only does that create a need for more funding than is necessary, but it also creates an opportunity for a windfall in cases where a company elects to receive support based on the wireline model, but then deploys less expensive wireless broadband service in the supported area.[35]

The final significant departure from market-driven policies is the proposal in Step 4 to provide price cap incumbent LECs a right of first refusal to offer service in the supported area at the support level calculated by the ABC Plan model. Granting this right of first refusal means that a more efficient provider would be precluded from the opportunity to offer service at a lower level of support. Consequently, the program will need to spend more money than is necessary to bring service to these areas.

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[34] OBI Broadband Availability Gap Paper at 12, Exh. 1-I.

[35] *See* ABC Plan, Attach. 1 at 6 (incumbent LEC is given the right of first refusal to receive support based on the wireline cost model to serve an area) and 3 ("providers can use any wireline or wireless technology that meets the specified bandwidth and service requirements" to meet their broadband service obligations).

The proposal to limit the right of first refusal to areas where the incumbent LEC has facilities serving 35 percent of the supported area does not improve it in any meaningful way. The 35 percent threshold is applied at the wire center level and it appears that the incumbent LEC will be able to satisfy that test in the vast majority of situations.[36]

The ABC Plan erroneously suggests that this significant departure from market-based mechanisms will "accelerate the deployment of broadband and avoid inefficient duplication of facilities constructed with the help of legacy high-cost universal service programs."[37] Put differently, the price cap incumbent LECs are suggesting that they should have first access to new money simply because they were recipients of old money. That is precisely the opposite of a market-driven approach and it should be summarily rejected. Instead, the Commission should use a more neutral distribution method, as proposed in the Amended ABC Plan.[38] Such an approach would allow market forces to identify the most efficient broadband provider to serve an area.

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[36] *Id.*, Attach 1 at 6 n.7 (estimating that incumbent LECs would be able to exercise the right of first refusal in 82% of the eligible census blocks).

[37] *Id.*, Attach 1at 6.

[38] As discussed in note 19 *supra*, the Commission could also consider providing portable support to the provider that wins the customer, or directly to consumers in the form of portable vouchers. *See, e.g.,* Comments of the American Cable Association, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, at 36-37 (Apr. 18, 2011); Comments of the Rural Cellular Association, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, at 13-14 (Apr. 18, 2011); Opening Comments and Reply Comments on Section XV of Time Warner Cable Inc., WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, at 31-32 (Apr. 18, 2011); *see also* Gregory L. Rosston and Bradley S. Wimmer, Testimony on Universal Service Reform, Committee on Energy and Commerce, Subcommittee on Communications Technology and the Internet, United States House of Representatives, http://republicans.energycommerce.house.gov/hearings/Testimony.aspx?TID=2867 at 5-6 (Nov. 17, 2009) ("In general, high cost support programs should be competitively neutral, allowing the rural customers to determine the services that meet their telecommunications needs. We believe that this could best be achieved by distributing subsidies to rural customers themselves, not the companies that serve them.").

B. Intercarrier Compensation

1. Certainty regarding Voice over Internet Protocol (VoIP) compensation

From the perspective of cable operators, one of the most significant accomplishments the Commission could achieve in this proceeding would be to provide real clarity with respect to the appropriate compensation for traffic that originates or terminates with a VoIP provider. As new entrants into an environment that was dominated by incumbent LECs, cable operators have faced a number of challenges in the intercarrier compensation context. First, because incumbent LEC networks primarily deployed TDM-based technology, cable operators and other IP-based competitors have been forced to bear significant costs for equipment that converts IP traffic to TDM and vice versa. Cable operators have been forced to bear responsibility for this conversion in both directions, i.e., when sending traffic to the incumbent LECs and when they send traffic to cable operators' IP networks. This additional cost, which incumbent LECs do not bear, essentially operates as a penalty on companies that have deployed modern IP technology.

Adding insult to injury, many incumbent LECs or their affiliates have refused to pay tariffed access charges that are assessed by cable operators.[39] These carriers advance a variety of arguments for not paying, but they are all variations on the same theme – your network does not look like our network and therefore we will not pay you the same charges that we impose.[40] Consequently, the net effect of the current intercarrier compensation regime is that cable operators generally bear costs that other carriers do not, yet collect less when terminating traffic.

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[39] *See* Comments of the National Cable & Telecommunications Association, WC Docket No. 11-115, at 3 (Aug. 8, 2011) ("Requiring VoIP providers to incur the additional costs of converting their traffic to TDM format is bad enough; Verizon's refusal to pay applicable access charges once the traffic has been converted adds insult to injury.").

[40] Verizon takes this approach one step further, refusing to pay access charges on all of a provider's traffic, including non-VoIP traffic that originates and terminates as TDM. *See* Comments of the National Cable & Telecommunications Association, WC Docket No. 11-115, at 3 (Aug. 8, 2011).

As NCTA explained in a recent letter, any intercarrier compensation reform plan must include: (1) confirmation that carriers that exchange traffic that is originated or terminated on a VoIP network are fully included in the intercarrier compensation regime; and (2) clarification of the precise compensation rights and obligations that apply to such carriers on a prospective basis.[41] In resolving these issues, we encouraged the Commission to minimize the scope and duration of any differences between TDM and IP technology and, to the extent such disparities exist, to provide for symmetrical treatment of traffic originated by VoIP providers and traffic terminated by VoIP providers.[42]

The ABC Plan's proposals for intercarrier compensation also move in the right direction but still demonstrate a bias toward traditional TDM networks. In particular, by making clear that traffic that originates or terminates in IP format is covered by the compensation rules, but not making corresponding adjustments in the rules to reflect the differences between IP networks and TDM networks, there is a significant possibility that any new rules would fail to provide the certainty that all providers agree would be beneficial.[43]

To avoid continuing disputes about the appropriate compensation for VoIP traffic, any new rules designed to address VoIP compensation should focus on the service provided, i.e.,

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41 NCTA July 29 *Ex Parte* Letter at 4.

42 *Id.* We note that this principle of symmetry actually works to the benefit of incumbent LECs because cable operators would continue to bear all the costs of any IP-to-TDM conversion. Given this, it would be reasonable for the Commission to allow providers to assess separate charges for performing the conversion of TDM traffic to or from IP, or to assess higher termination rates for terminating TDM traffic on IP networks.

43 Neither the original ABC Plan nor the Amended ABC Plan address issues applicable to direct IP-to-IP interconnection. The Amended ABC Plan deletes the erroneous assertion in footnote 10 of the ABC Plan that IP-to-IP interconnection is governed by commercial agreements. ABC Plan, Attach. 1 at 10 n.10. As set out in our comments filed in response to tw telecom's petition for declaratory ruling, section 251(c)(2) of the Act requires incumbent LECs to provide direct IP-to-IP interconnection for the transmission and routing of facilities-based VoIP services. Comments of the National Cable & Telecommunications Association, WC Docket No. 11-119 (Aug. 15, 2011). Although it is important for the Commission quickly to address the refusal of incumbent LECs to directly interconnect in IP format for the provision of VoIP services, the Commission need not address those issues in this proceeding.

termination of a call, rather than the particular equipment used in performing that service. Specifically, the Commission should make clear that an originating provider is obligated to pay the specified terminating rate, regardless of the technology of the terminating network and regardless of whether the traffic is delivered to the called location by the terminating carrier or a partner company (e.g., when a VoIP provider and a competitive LEC partner to deliver service).

2. Tandem Switching and Transport

While the Commission's focus on adopting market-driven policies generally means eliminating old rules and adopting new approaches, it also means that the Commission should preserve pro-competitive regulations that already have proven successful in promoting a competitive environment. For that reason, the Amended ABC Plan makes clear that tandem switching services, which are part of transport services, are included in the transition to unified terminating rates.

For a variety of technical, economic, and historical reasons, most non-Bell company providers do not exchange traffic directly with each other, but do so indirectly through regulated transport and transit services provided by the Bell companies (AT&T, Verizon and CenturyLink). These services have always been provided by the Bell companies pursuant to federal and state access tariffs for long distance traffic, or state-approved interconnection agreements for local traffic.

Since 1996, incumbent LECs have been arguing that they should not have to provide this functionality to their competitors pursuant to section 251 of the Communications Act of 1934, as amended (the Act).[44] Over the years, state commissions repeatedly and consistently have

[44] 47 U.S.C. § 251.

rejected these incumbent LEC arguments.[45] A number of those state decisions have been upheld in the courts.[46]

Having tried and failed at the state level, the Bell companies have attempted to include this pet project into federal intercarrier compensation reform efforts.[47] At best, the ABC Plan is unclear about the status of incumbent LEC transport and transit services; at worst it attempts to significantly undermine competition by suggesting that such services would fall outside of the regulatory regime. Because competition for these services is not ubiquitous, eliminating regulation of these transport and transit services as proposed by the incumbent LECs would force competitive providers to pay unreasonably high charges for these services or make expensive changes in physical interconnection arrangements. There is no policy basis for either outcome and consequently the ABC Plan must be amended to make clear that incumbent LECs must continue to provide such services at cost-based and reasonable rates. The Amended ABC Plan makes clear that regulation of these critical services remains and clarifies the rates applicable to these services.

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45 *See, e.g., Petition of Youghiogheny Communications-Northeast, LLC d/b/a Pocket Communications for a Declaratory Ruling that the Southern New England Telephone Company d/b/a AT&T Connecticut is in Violation of Section 16-247B of the Connecticut General Statutes and the Department's Orders in Docket No. 02-01-23 Relating to Transit Traffic and Federal and State Laws and Regulations Relating to the Transit Traffic Factor*, DOCKET NO. 08-12-04, Decision, at 1, 41 (Conn. Dept. of Pub. Util. Control, Oct. 7, 2009) (affirming that the Connecticut DPUC continues to have statutory authority to regulate transit service and the rates charged for the service).

46 *See, e.g., Qwest Corp. v. Cox Nebraska Telcom, LLC*, 4:08CV3035, Memorandum Opinion, at 11-12 (D. Neb., Dec. 17, 2008) ("[T]he clear language of Section 251 requires an ILEC to provide transit service pursuant to its interconnection obligations under Section 251(c)(2)."); *The Southern New England Telephone Company v. Anthony J. Perlermino*, 3:09-cv-1787(WWE), Memorandum of Decision, at 8 (D. Conn., May 6, 2011) ("[I]nterconnection under section 251(c) includes the duties to provide indirect interconnection and to provide transit service.").

47 The Bell companies attempted to deregulate transport and transit services that they provide as part of indirect interconnection in the AT&T-sponsored Missoula Plan in 2006. Letter from Tony Clark, Ray Baum, and Larry Landis, State Commissioners, to Kevin Martin, Chairman, Federal Communications Commission, CC Docket No. 01-92, Attach, Executive Summary at 11-12 (July 24, 2006) (Missoula Plan).

IV. CHANGES THAT PROMOTE ACCOUNTABILITY

Recipients of high-cost support must be accountable for their receipt and use of federal support. Therefore, the Commission should not adopt the ABC Plan's proposal for access replacement funding for incumbent LECs. Rather than simply providing support to incumbent LECs because they have in the past received support, or implicit subsidies, the Commission should make access replacement support available only where such support is needed.

In particular, there is no need for price cap incumbent LECs to receive any access replacement support. These carriers are large companies with many streams of revenue, most of which are completely unregulated.[48] There is no need to provide such carriers access replacement funding, particularly when the CAF support mechanism will serve to identify explicitly the total amount of support that is necessary to serve high-cost areas. There is no need to prolong price cap incumbent LECs' receipt of implicit support through above-cost access charges or funding to replace such implicit support.

To the extent the Commission concludes that some access replacement funding may be appropriate for some small, rural rate-of-return regulated incumbent LECs, which rely heavily on access revenue currently, any such funding should be provided only after the rate-of-return incumbent LEC demonstrates that such support is warranted and necessary. Specifically, any access replacement funding should only be provided after a rate-of-return incumbent LEC has

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[48] Virtually all of the price cap incumbent LECs have completed or announced major acquisitions that demonstrate they have healthy businesses that are fully capable of transitioning to lower access charges without the need for additional government subsidies. *See, e.g.,* Evelyn M. Rusli, *Windstream to Buy Paetec for $891 Million*, The New York Times Deal Book (Aug. 1, 2011), http://dealbook.nytimes.com/2011/08/01/windstream-to-buy-paetec-for-891-million/; CenturyLink, Inc. Application for Consent to Transfer Control of SAVVIS, Inc. and SAVVIS Communications Corporation, WC Docket No. 11-97, at 6 n.16 (May 20, 2011) ("The total value of the transaction is estimated at about $3.2 billion, of which about $2.5 billion will be paid by CenturyLink in cash and stock to SAVVIS Holdings shareholders. Another $700 million in SAVVIS debt will be refinanced or assumed by CenturyLink."). Indeed, three price cap incumbent LECs (CenturyLink, Frontier and Fairpoint) have acquired significant incumbent LEC properties notwithstanding the potential for intercarrier compensation reform.

accounted for current market realities, including the availability of revenue from other sources, such as from the provision of broadband, wireless, or other unregulated services. The rate-of-return incumbent LEC must also disclose the savings it will experience from paying lower termination rates due to the intercarrier compensation transition.

The availability of any access replacement funding should be limited to a five-year period, and should be transitioned out during this period. The current access replacement funding mechanisms, Interstate Access Support (IAS) and Interstate Common Line Support (ICLS), lacked this accountability and have lingered on substantially past their intended availability period.

CONCLUSION

For all the reasons explained above, the Commission should ensure that its high-cost support and intercarrier compensation reforms fully comport with its stated principles of modernizing support for broadband, fiscal responsibility, accountability, and market-driven policies. The attached Amended ABC Plan is a reform proposal that meets these goals and should be adopted.

Respectfully submitted,

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ATTACHMENT

AMENDED ABC PLAN

Amended America's Broadband Connectivity (ABC) Plan Framework

The Amended ABC Plan includes reforms to both the universal service high-cost support mechanism and the intercarrier compensation system that work together to ensure that all Americans have access to broadband service. First, the plan creates new universal service high-cost programs that explicitly support the provision of broadband service in high-cost areas, replacing the patchwork of legacy universal service programs that were designed to support plain old telephone service (POTS). Second, the plan reforms the intercarrier compensation system to reduce carriers' reliance on implicit support mechanisms that are no longer sustainable and were not designed to support the deployment of broadband. Finally, the plan discusses an optional, interim transition for certain smaller carriers to become subject to the Amended ABC Plan.[1]

1. Modernizing the Universal Service Fund to Support Broadband

The Amended ABC Plan proposes two new universal service programs – a Connect America Fund (CAF) and an Advanced Mobility/Satellite Fund (AMF) – to support the provision of broadband service in high-cost areas. The CAF, which will begin disbursing support on July 1, 2012, will both support the deployment of broadband service to millions of unserved homes and also support the continued operation of existing broadband networks in areas where support is needed to continue providing broadband service to consumers.

The AMF is designed to support the provision of mobile broadband service in high-cost areas that would otherwise lack such service, and also to support the provision of broadband satellite service in the highest-cost areas.

The plan eliminates the support that incumbent local exchange carrier (LEC) Eligible Telecommunications Carriers (ETCs) and competitive ETCs receive from the legacy universal service programs once the CAF begins to disburse broadband funding in an area. The plan eliminates those ETCs' support from the legacy universal service programs entirely in areas where an unsupported broadband competitor provides service. This creation of a broadband-focused CAF and AMF reflects the National Broadband Plan's key universal service recommendations and advances the public interest in promoting broadband availability.

Constraint on Fund Size: As of January 1, 2012, the annual amount of universal service high-cost support, including any remaining legacy support and all newly-adopted funding mechanisms, shall be capped at $4.5 billion.

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[1] As the Commission has recognized, a different set of rules may need to apply in Alaska, where the costs and challenges of providing broadband are very different from those in the other 49 states. Therefore, the proposals in this plan would not apply in Alaska, and the Commission should instead adopt Alaska-specific reforms consistent with the proposals set out by GCI in its August 1, 2011 letter. Letter from Christopher Nierman, Director, Federal Regulatory Affairs, GCI, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, 06-122, 04-36, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, 99-200, 96-98, 99-68 (Aug. 1, 2011).

The Connect America Fund

This section of the plan proposes a framework for the creation and operation of a new Connect America Fund (CAF). Although the CAF could be applied throughout the country, Section 3 of this plan proposes an alternative, interim approach that the Commission may choose to use for the distribution of support in areas served by LECs subject to federal rate-of-return regulation. If the Commission adopted this alternative approach, the reforms suggested in this section would apply only to areas served by LECs subject to federal price cap regulation during this interim period.

The CAF is targeted to support the provision of broadband service to residential and business service locations in high-cost areas. Many of these high-cost areas currently receive little or no universal service support from the legacy universal service programs. Under the Amended ABC Plan, the Commission will begin to narrow the "rural-rural divide" that has provided rural areas served by incumbent LECs subject to federal price cap regulation with less support than the rural areas served by incumbent LECs subject to federal rate-of-return regulation.[2]

The CAF will begin disbursing support on July 1, 2012. Some areas may begin to receive CAF support sooner than other areas, based upon the Commission's competitive bidding process. The design of the CAF reflects a procurement model, under which providers incur service obligations only to the extent they agree to perform them in explicit agreements with the Commission.

Term of Support

Broadband providers that elect to receive support from the CAF will receive a fixed level of support for a term of ten years from the date on which support is awarded. To the extent that the Commission phases in a CAF recipient's support for an area by providing CAF support for some census blocks before it provides CAF support for other census blocks, each group of census blocks will have a separate ten-year term. A CAF recipient's support may not be reduced once awarded, provided that the recipient meets the obligations associated with CAF support. At the end of the ten-year term, the CAF recipient's support and obligations will both end.

Broadband Service Supported by the CAF

Providers that receive CAF support must make available broadband service that provides customers with a minimum downstream bandwidth of 4 Mb/s and a minimum upstream bandwidth of 768 kb/s. The supported broadband service must be capable of providing access to voice service. The broadband service obligation is technology-neutral: providers can use any wireline or wireless technology that meets the specified bandwidth and service requirements.

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[2] *Connect America Fund NPRM* at ¶ 6.

Supported Areas

CAF support is available only in those high-cost areas in which there is no private sector business case to offer broadband. The assessment of whether an area is "high-cost" is made on a census block-by-census block basis.

No CAF support for census blocks served by an unsupported broadband competitor: CAF support is not available in any census block in which at least one unsupported broadband competitor is already offering broadband service, nor is it available in any census block that received ARRA funding from the Rural Utilities Service or the National Telecommunications and Information Administration to build broadband facilities.[3] An "unsupported broadband competitor" is a facilities-based competitor that has invested to provide broadband (wireline or wireless) in the census block without using federal or state high-cost universal service support. The availability of broadband service from an unsupported broadband competitor demonstrates that there is a private sector business case to offer broadband and that universal service high-cost support is not required.

The Commission should determine whether an area is already served by an unsupported broadband competitor. Alternatively, the Commission could rely on state mapping entities that have been awarded grants under NTIA's State Broadband Initiative to identify areas that are served by an unsupported broadband competitor. The Commission or state mapping entities may make that determination using broadband deployment mapping information, but parties must have the opportunity to challenge the mapping data and provide additional information that indicates the presence or absence of an unsupported broadband competitor.

Cost model to identify high-cost areas: For each census block that does not have an unsupported broadband competitor, the Commission will use a forward-looking cost model to determine the cost of providing broadband service in the census block. A census block is eligible for support from the CAF if the average per-service location cost of providing broadband service in the census block, as determined by the cost model, exceeds a high-cost "benchmark" that the Commission will specify. If the modeled cost of providing broadband service is below the benchmark, then the census block is not considered "high- cost" and is not eligible for CAF support.

Census blocks whose cost is above the alternative technology threshold: The National Broadband Plan found that a small number of the most expensive locations represent a disproportionate share of the broadband availability "gap."[4] In order to minimize the contribution burden on consumers, the National Broadband Plan recommended that the

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3 A competitor's service qualifies as "broadband service" if it has the same capabilities as the broadband service supported by the CAF, i.e., it provides customers with a minimum downstream bandwidth of 4 Mb/s and a minimum upstream bandwidth of 768 kb/s, and also provides robust service that is sufficient for households to use education and health care applications specified by the Commission.

4 National Broadband Plan at 138.

Commission consider satellite broadband for addressing the most costly areas of the country.[5] Consistent with that recommendation, the plan excludes the highest-cost census blocks from support from the CAF. To identify the highest-cost census blocks, the Commission will specify an "alternative technology threshold." If the average cost per-service location of a census block exceeds the alternative technology threshold, then the census block is excluded from the calculation of the baseline support available from the CAF.

Six incumbent LECs retained CostQuest Associates, Inc. (CostQuest) to develop a model called the CostQuest Broadband Analysis Tool (CQBAT).[6] CQBAT calculated the forward-looking cost of providing broadband based on the costs of deploying wireline incumbent LEC networks, and calculated estimated support levels for these networks on a census block basis. The Commission should seek comment on adopting a model to determine high-cost areas eligible for CAF support, and for setting the upper limit of CAF support that would be available to providers for serving those areas. The Commission should consider whether the CQBAT should be modified to estimate the cost of building wireless broadband facilities. If the Commission seeks comment on the CQBAT, that model must be made fully available to all interested parties to enable informed analysis and comment.

Baseline Support Amount

Calculation of baseline support amount: If the average per-service location cost of a census block is above a benchmark but below the alternative technology threshold, then the census block is included in the calculation of the baseline support amount. For each such census block, the Commission will determine the support amount by subtracting the benchmark cost[7] from the modeled cost of providing broadband.

Distribution of CAF Support

Once the Commission has determined the supported area and the baseline support for each census block, providers may apply to the Commission for CAF support. Providers may apply for CAF support by aggregating census blocks in census block groups, census tracts, or block numbering areas (BNAs).

Providers applying for support: Any qualified wireless or wireline provider that can meet the specified broadband service obligations may apply for CAF support and the obligation to serve the associated census blocks. If multiple providers apply for support, the Commission will use competitive bidding to select the support recipient. Support is provided to the lowest bidder that will meet the specified buildout and service

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[5] National Broadband Plan at 150.

[6] The six incumbent LECs are AT&T, CenturyLink, FairPoint Communications, Frontier Communications, Verizon, and Windstream.

[7] The benchmark cost of a census block is determined by multiplying the number of service locations in the census block by the per-line high-cost benchmark specified by the Commission.

requirements. The baseline support amount functions as the reserve price, i.e., support cannot exceed that amount in the area. If demand for CAF funding in a given year exceeds the amount available, the Commission would prioritize awards based on the lowest cost per unserved household, as proposed by the Commission.

Adjust obligations and/or support if no provider applies: If no provider applies for the CAF baseline support amount, then the Commission may adjust the broadband obligations and/or the available support, subject to the overall constraint on universal service high-cost support.

Obligations of the CAF Recipient

Consistent with the procurement model of universal service high-cost support, the Commission shall impose CAF obligations only on providers that elect to receive support from the CAF, and those obligations shall apply only in the supported areas and for the ten-year term for which support is provided. The Commission shall specify CAF recipients' obligations at the outset, and shall not modify the CAF obligations or other terms of the agreement between the Commission and the CAF recipient without the CAF recipient's consent. The Commission shall not impose broadband service obligations on existing ETCs that do not receive support from the CAF.

Five-Year Buildout Obligation: A CAF recipient has five years from the date on which it is awarded CAF support to build out its broadband network to any unserved areas and meet the broadband service obligation described below.

Broadband Service Obligation: No later than five years after it is awarded CAF support, the CAF recipient must make broadband service available to all service locations in the supported areas for which it receives CAF support.

Under the plan, consumers in census blocks whose costs are above the alternative technology threshold would be able to purchase broadband service directly from a broadband satellite provider. The Commission may provide support from the AMF to offset a portion of the installation costs for satellite broadband for a limited number of such consumers (see AMF discussion, below).

Ten-year term: The CAF recipient must continue to meet its broadband service obligation in its supported areas until the end of the ten-year term of its CAF support. A provider's CAF obligations terminate at the end of the ten-year term.

Advanced Mobility/Satellite Fund

The Advanced Mobility/Satellite Fund (AMF), which would begin disbursing support at the same time as the CAF, has two functions. First, the Commission may use support from the AMF to offset a portion of the installation costs for a limited number of broadband satellite customers in the highest-cost areas in which CAF recipients do not deploy broadband because of the limit on support available for such areas, and where no unsubsidized broadband competitor offers service. Second, the Commission may use some funds from the AMF to support the provision of mobile broadband service in those high-cost areas that will not receive service as a result of planned commercial mobile broadband deployments, and where no unsubsidized broadband competitor is offering service. A provider may not receive AMF support and CAF support for the same facility.

The Amended ABC Plan does not include a detailed proposal for the operation of the AMF. The plan supporters look forward to working with providers of rural mobile broadband service, satellite broadband providers, and other interested parties to develop a complete proposal for the operation of the AMF.

Transition from Legacy Universal Service Programs

Phaseout of legacy high-cost programs: As the Commission begins to phase in support for the CAF and AMF, the Commission will at the same time phase out all incumbent LEC ETC and competitive ETC support from legacy high-cost programs (IAS, ICLS, HCM, HCL, and LSS). The support that an ETC may receive from the legacy high-cost programs will be reduced by 1/3 effective July 1, 2012, will be reduced by ½ effective July 1, 2013, and will be eliminated entirely by July 1, 2014. All legacy support to an incumbent LEC will immediately cease if another provider begins to receive CAF support for serving all of the households within the incumbent LEC's study area. All legacy high-cost universal service support will be eliminated immediately in study areas that are entirely served by an unsubsidized broadband competitor. When support from the legacy programs is eliminated the legacy ETC service obligations are also eliminated.

2. Reforming Intercarrier Compensation to Support Broadband

Consistent with the National Broadband Plan's intercarrier compensation recommendations, the Amended ABC Plan creates a glide path to phase down per-minute charges to a low uniform rate while providing carriers with a meaningful opportunity for revenue recovery, and includes interim solutions to address arbitrage.[8] Under the plan, the regulated terminating intercarrier compensation rates of all carriers, except carriers operating in rate-of-return incumbent LEC territories, are phased down to a uniform default rate of $0.0007 per minute by July 1, 2017. The specifics of the intercarrier compensation transition for carriers operating in rate-of-return incumbent LEC territories are included in section 3 below.

Reform of terminating intercarrier compensation rates will advance broadband deployment by reducing the disincentives to deploying IP networks and reducing carriers' reliance on unstable implicit support mechanisms. And, by eliminating the disparities between intrastate and interstate access rates, and between access rates and rates for other traffic, the plan will end arbitrage schemes and disputes that divert resources from broadband deployment. Without reform, the ongoing decline in intercarrier compensation revenue will be an impediment to broadband deployment and may jeopardize universal service.

The intercarrier compensation reform and universal service reform provisions of the Amended

[8] National Broadband Plan at 136.

ABC Plan are inextricably linked. Carriers are able to reduce their reliance on implicit support from intercarrier compensation because the plan provides support from new explicit mechanisms – the CAF and the access replacement mechanism. And, to ensure that carriers are able to sustain and expand broadband networks during the transition, the plan begins disbursements from the CAF on the same date – July 1, 2012 – that the plan begins reducing terminating intercarrier compensation rates.

Interim Rules

Voice over Internet Protocol (VoIP): The intercarrier compensation treatment of VoIP traffic that is exchanged between LECs and other carriers has been the subject of long-running disputes. This plan does not take a position on the appropriate intercarrier compensation treatment of VoIP traffic prior to January 1, 2012. Under the plan, the Commission will adopt a new rule, effective January 1, 2012, to govern the intercarrier compensation rates applicable to the termination of VoIP traffic exchanged between LECs and other carriers.[9] Such traffic will be rated at interstate access rates if the call detail indicates an "access" call, or at reciprocal compensation rates if the call detail indicates a "non-access" call.[10] All "toll" traffic that originates in IP or terminates in IP will be subject to current terminating interstate access rates (regardless of whether it is interstate or intrastate); local termination rates would not be affected. All such traffic is incorporated into the overall transition as rates for terminating interstate access traffic are reduced and eventually unified at $0.0007 pursuant to the comprehensive reform plan described below. Under the plan, terminating intrastate access rates will not be applied to VoIP traffic. The full termination rate for VoIP traffic must be paid to the carrier that accepts the traffic for termination, regardless of the particular equipment that is used and regardless of whether the traffic is delivered to its ultimate destination by the carrier that assesses the termination charge or by another entity that provides retail service to the customer.

Measures to address arbitrage: The Commission should adopt rules to address phantom traffic and arbitrage schemes involving both originating and terminating traffic, including traffic pumping, and make clear that call detail record information must be accurate. The Commission should adopt an order addressing phantom traffic, traffic pumping, and other arbitrage schemes that is effective no later than January 1, 2012.

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[9] Under the Commission's rules, originating access minutes for "open end" services, such as 800 and 888 services, are treated as terminating minutes for purposes of compensation. 47 C.F.R. § 69.105(b)(1)(iii); *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing End User Common Line Charges*, CC Docket Nos. 96-262, 94-1, 91-213, 95-72, First Report and Order, 12 FCC Rcd 15982, 16142, ¶¶365-66 (1997). Therefore compensation for the origination of VoIP 800 and 888 services will be treated the same as termination of other VoIP traffic under this plan.

[10] The MTA rule would continue to apply to wireless VoIP traffic. For example, intraMTA VoIP traffic originated by a wireless carrier would be subject to reciprocal compensation rates.

Comprehensive Reform: Measured Transition to a Unified $0.0007 Rate for Transport and Termination

The plan transitions all price cap incumbent LEC, competitive LEC, and commercial mobile radio service (CMRS) terminating intercarrier compensation rates to a uniform default rate of $0.0007 per minute by July 1, 2017.[11] The five-year transition is designed to give carriers adequate time to prepare and make adjustments to offset the lost revenues.[12]

The rates specified in the transition schedule and the ultimate $0.0007 rate are default rates. Carriers are free to enter into negotiated arrangements that depart from the default rates.

- **July 1, 2012**: Each carrier reduces its reciprocal compensation rate and intrastate terminating access rate for transport and switching, including access rates for the provision of tandem switching, if above the carrier's interstate access rate, by 50% of the differential between the rate and the carrier's interstate access rate.
- **July 1, 2013**: Each carrier reduces its reciprocal compensation rate and intrastate terminating access rate for transport and switching, including access rates for the provision of tandem switching, if above the carrier's interstate access rate, to parity with the carrier's interstate access rate;
- **July 1, 2014**: Each carrier reduces its terminating end office rates by one-third of the differential between its end office rates and $0.0007. Transport rates and tandem switching access rates remain unchanged from the previous step.
- **July 1, 2015**: Each carrier reduces its terminating end office rates by an additional one-third of the differential calculated in the previous step, or by one-half of the difference between the current rate and $0.0007. Transport rates and tandem switching access rates remain unchanged.
- **July 1, 2016**: Each carrier reduces its terminating end office access rate to $0.0007. Transport rates and tandem switching access rates remain unchanged.
- **July 1, 2017**: Each carrier unifies all terminating traffic at a rate of $0.0007 for transport and termination. Where the terminating carrier also provides tandem switching and transport services, the $.0007 rate shall include all of these services. Where the terminating carrier differs from the carrier providing the tandem switching and transport services, the purchasing carrier

[11] This framework applies only to traffic exchanged between carriers in TDM format. This plan does not address the treatment of traffic exchanged between carriers in IP format. As discussed in note 9 *supra*, the Commission treats originating access minutes for "open end" services such as 800 and 888 services as terminating minutes for purposes of compensation; therefore compensation for the origination of 800 and 888 services will be treated the same as termination of other access services under this plan.

[12] National Broadband Plan at 149.

will pay \$0.0007 per minute to both the terminating carrier for terminating the call, and to the tandem switching/transport provider.[13]

No terminating or other intercarrier compensation rates may increase. All bill and keep arrangements remain in place.

During the first two steps of the transition, both originating and terminating intrastate dedicated transport rates are transitioned to interstate levels.

Price Cap Incumbent LEC Subscriber Line Charges

As terminating intercarrier compensation revenue is reduced, price cap incumbent LECs are given the opportunity to adjust their business plans and rely to a greater extent on retail customer revenue. To facilitate that shift, the plan lessens restrictions on incumbent LECs' federal subscriber line charge (SLC) rates and pricing flexibility. Although any increases in SLC rates will be significantly constrained by competition from wireless carriers, cable companies, "over the top" VoIP providers, and other competitors, the plan nonetheless retains a SLC cap and benchmark mechanism as consumer backstops.

For price cap LECs, the cumulative increase in the SLC may not exceed \$0.75 effective July 1, 2012; \$1.50 effective July 1, 2013; \$2.25 effective July 1, 2014; \$3.00 effective July 1, 2015; and \$3.75 effective July 1, 2016.

In addition, any SLC increase may not cause the sum of the local residential rate, federal SLC, state SLC, mandatory EAS, and per-line contribution to the state's high-cost fund, if the state has a high-cost fund, to exceed a benchmark of \$30 per month.

3. Interim Treatment of Incumbent LECs Subject to Rate-of-Return Regulation

As discussed above, although the CAF would ultimately be the primary mechanism by which high-cost support for broadband would be distributed, the Commission may choose to adopt for an interim period an alternative approach for areas served by incumbent LECs subject to federal rate-of-return regulation. Such an interim approach would be available for a limited period of time, with all non-AMF support coming solely from the CAF beginning in 2019.

Federal-State Joint Board Referral

The Commission would refer to the Federal-State Joint Board on Universal Service the issue of how best to transition high-cost support for ETCs in areas served by incumbent LECs subject to federal rate-of-return regulation. The Joint Board would provide the Commission with its transition recommendation within six months of the date of

[13] The tandem switching and transport services included in the transition plan apply to calls that would previously have been subject to access charges. Transit services, provided by incumbent LECs pursuant to the interconnection obligations under section 251(c)(2) of the Act, continue to be subject to cost-based rates determined by the states pursuant to section 252(d)(1) of the Act.

Commission adoption of universal service high-cost support and intercarrier compensation reform rules.

Immediate Reforms to Rate-of-Return Regulation

The Commission should adopt immediate reforms to federal rate-of-return regulation while it remains in effect. Specifically, the Commission should change the current 11.25% allowed rate of return to 8.5% as proposed by the State Members of the Joint Board. The Commission should also adopt its proposals to eliminate support for corporate operations expenses, limit to a specific level the operating expenses and capital expenses that rate-of-return regulated incumbent LECs can recover, and institute a cap of $3000 per line per year on the amount of high-cost support a rate-of-return regulated LEC can receive.

Rate-of-Return Incumbent LEC Subscriber Line Charges

As with price cap regulated incumbent LECs, rate-of-return regulated incumbent LECs would be given the opportunity to recover additional revenue through increases in the SLC caps. Specifically, SLC caps for rate-of-return regulated incumbent LECs will increase $0.75 per line over five years. Any SLC increase may not cause the sum of the local residential rate, federal SLC, state SLC, mandatory EAS, and per-line contribution to the state's high-cost fund, if the state has a high-cost fund, to exceed a benchmark of $30 per month.

Eliminating Support in Areas Served By An Unsubsidized Broadband Competitor

The Commission should endeavor to ensure the viability of private sector investment by eliminating subsidies in areas where an unsubsidized broadband competitor is offering service. Using the cost model adopted in conjunction with determining high-cost areas and for providing the upper limit of CAF support, the Commission should identify study areas served by rate-of-return regulated incumbent LECs where (1) unsubsidized broadband providers serve more than 75% of homes; and (2) current high-cost support exceeds projected support under the cost model for the remaining areas by more than 10%. During the interim period, in any study area that meets those criteria, the Commission should provide notice to the carrier that support will be reduced to the level suggested by the cost model unless it can demonstrate that a higher amount is necessary. Support will then be phased out consistent with any Joint Board transition recommendation adopted by the Commission.

Intercarrier Compensation Transition for Carriers in Areas Served by Incumbent LECs Subject to Federal Rate-of-Return Regulation

The terminating intercarrier compensation rates for all carriers providing service in areas served by incumbent LECs subject to federal rate-of-return regulation will transition to a uniform default rate of $0.0007 per minute by July 1, 2019.[14] The transition is designed

[14] As in the transition for other providers discussed above, this framework applies only to traffic exchanged

to give carriers providing service in rate-of-return incumbent LEC areas adequate time to prepare and make adjustments to offset the lost revenues.[15]

The rates specified in the transition schedule and the ultimate $0.0007 rate are default rates. Carriers are free to enter into negotiated arrangements that depart from the default rates.

- **Step 1 – July 1, 2012:** Each carrier caps its interstate originating and terminating switched access rates, and reduces reciprocal compensation rate and intrastate terminating access rate for transport and switching, including access rates for the provision of tandem switching, if above the carrier's interstate access rate, by 50% of the differential between the rate and the carrier's interstate access rate.
- **Step 2 – July 1, 2013**: Each carrier reduces its reciprocal compensation rate and intrastate terminating access rate for transport and switching, including access rates for the provision of tandem switching, if above the carrier's interstate access rate, to parity with the carrier's interstate access rater.
- **Step 3 – July 1, 2014**: Each carrier reduces its terminating end office rates by one-third of the differential between its end office rates and $0.005. Transport rates and tandem switching access rates remain unchanged from the previous step.
- **Step 4 – July 1, 2015**: Each carrier reduces its terminating end office rates by an additional one-third of the differential calculated in the previous step, or by one-half of the difference between the current rate and $0.005. Transport rates and tandem switching access rates remain unchanged.
- **Step 5 – July 1, 2016**: Each carrier reduces its terminating end office rates to $0.005. Transport rates and tandem switching access rates remain unchanged.
- **Step 6 – July 1, 2017**: Each carrier reduces its terminating end office rate by 1/3 of the difference between $0.005 and $0.0007 (to $0.00357). Transport rates and tandem switching access rates remain unchanged.
- **Step 7 – July 1, 2018**: Each carrier reduces its terminating end office rate by an additional 1/3 of the difference between $0.005 and $0.0007 (to $0.00214). Transport rates and tandem switching access rates remain unchanged.

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between carriers in TDM format and does not address the treatment of traffic exchanged between carriers in IP format. As discussed in note 9 *supra*, the Commission treats originating access minutes for "open end" services such as 800 and 888 services as terminating minutes for purposes of compensation; therefore compensation for the origination of 800 and 888 services will be treated the same as termination of other access services under this plan.

[15] National Broadband Plan at 149.

- **Step 8 – July 1, 2019**: Each carrier unifies all terminating traffic at a rate of $0.0007 for transport and termination. Where the terminating carrier also provides tandem switching and transport services, the $.0007 rate shall include all of these services. Where the terminating carrier differs from the carrier providing the tandem switching and transport services, the purchasing carrier will pay $0.0007 per minute to both the terminating carrier for terminating the call, and to the tandem switching/transport provider.[16]

No terminating or other intercarrier compensation rates may increase. All bill and keep arrangements remain in place.

During the first two steps of the transition, both originating and terminating intrastate dedicated transport rates are transitioned to interstate levels.

Transitional Access Replacement Mechanism

The plan provides a transitional access replacement mechanism for incumbent LECs subject to federal rate-of-return regulation that experience exceptionally large reductions in intercarrier compensation revenue that cannot be offset by revenue from other services that use the supported network or by cost savings on services that benefit from access charge reductions. If such LECs are able to demonstrate a need for additional support, they may recover a limited portion of their intercarrier revenue reductions from universal service support. The transitional access replacement mechanism will be available only upon a showing that the rate-of-return incumbent LEC cannot offset these revenue reductions with revenue from other services that use the supported network or by cost savings on services that benefit from access charge reductions.

To the extent that the impact of the reductions in access rates under the plan and the net impact of the reduction in reciprocal compensation rates exceeds an imputed SLC increase of $0.75 effective July 1, 2012; $1.50 effective July 1, 2013; $2.25 effective July 1, 2014; $3.00 effective July 1, 2015; and $3.75 effective July 1, 2016, or exceeds the maximum SLC increase permitted by the $30 benchmark, the incumbent LEC may recover 90 percent of any revenue reduction greater than the imputed SLC increase in 2012. This amount decreases to 80 percent in 2013, and decreases by 20 percent each year until access replacement support is eliminated in 2017. Support from the access replacement mechanism is calculated at the holding company level, i.e., by comparing the total holding company-level impact of the rate reductions to the imputed SLC increase applied to all holding company lines. A rate-of-return incumbent LEC that seeks support from the transitional access replacement mechanism must demonstrate to the Commission that it cannot offset these revenue reductions with revenue from other services that use the supported network or by cost savings on services that benefit from access charge reductions.

[16] The tandem switching and transport services included in the transition plan apply to calls that would previously have been subject to access charges. Transit services, provided by incumbent LECs pursuant to the interconnection obligations under section 251(c)(2) of the Act, continue to be subject to cost-based rates determined by the states pursuant to section 252(d)(1) of the Act.